

## **MINUTES**

### **MONTANA SENATE 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON PUBLIC HEALTH, WELFARE AND SAFETY**

**Call to Order:** By **CHAIRMAN AL BISHOP**, on January 29, 2001 at 3 P.M., in Room 317-A Capitol.

#### **ROLL CALL**

**Members Present:**

Sen. Al Bishop, Chairman (R)  
Sen. Duane Grimes, Vice Chairman (R)  
Sen. Chris Christiaens (D)  
Sen. Bob DePratu (R)  
Sen. Eve Franklin (D)  
Sen. Don Hargrove (R)  
Sen. Dan Harrington (D)  
Sen. Royal Johnson (R)  
Sen. Jerry O'Neil (R)  
Sen. Emily Stonington (D)

**Members Excused:** Sen. Fred Thomas (R)

**Members Absent:** None.

**Staff Present:** Jeanne Forrester, Committee Secretary  
Susan Fox, Legislative Branch

**Please Note:** These are summary minutes. Testimony and discussion are paraphrased and condensed.

**Committee Business Summary:**

Hearing(s) & Date(s) Posted: SB 248, 1/18/2001; SJ 8,  
1/23/2001; SB 288, 1/23/2001  
Executive Action:

#### **HEARING ON SB 248**

**Sponsor:** SEN. DUANE GRIMES, SD 20, CLANCY

**Proponents:** Pam Hanson, St. Vincent's Healthcare, St. James  
Healthcare, Holy Rosary Hospital

Craig Eddy, Surgeon, Hospital Administrator,  
Attorney  
Katharine Donnelley, Montana Health Care Providers  
Larry McEvoy, Deaconess Billings Clinic  
John McMahon, Montana Medical Association  
Bob Olsen, Montana Hospital Association  
Kristi Blazer, Rimrock Foundation  
Sami Butler, Montana Nursing Association  
Jerry Loendorf, Montana Medical Association  
Susan Witte, BlueCross BlueShield  
Jeanne Cannon, Helena Health Alliance

Opponents: Al Smith, Montana Trial Lawyers Association  
Doug Buxbaum, Montana Trail Lawyers Association  
Don Judge, Montana State AFL-CIO

Opening Statement by Sponsor:

SEN. DUANE GRIMES, SD 20, CLANCY, introduced SB 248. This bill is an outgrowth of a Supreme Court decision and will revise the laws governing information collected by health care review committees. It will clarify the type of committee that will have access to health care information, such as peer reviews. The policy decision to be determined is how much confidentiality ought there be within the medical community.

Proponents' Testimony:

Pam Hanson, St. Vincent's Hospital, St. James Healthcare, Holy Rosary Hospital, passed out a copy of her testimony **EXHIBIT**(phs23a01). She stated they stand in strong support of SB 248.

Craig Eddy, Surgeon, Hospital Administrator, Attorney, submitted a copy of his testimony **EXHIBIT**(phs23a02).

Katharine Donnelley, Montana Hospital Association, presented a copy of her testimony **EXHIBIT**(phs23a03).

Larry McEvoy, Deaconess Billings Clinic, passed our a copy of his testimony **EXHIBIT**(phs23a04).

John McMahon, Montana Medical Association, said physicians should be able to discuss amongst themselves, the various procedures they have performed, making sure proper procedures have been done. It is imperative that physicians feel free they can look at a case of one of their colleagues and be able to discuss it

honestly. They also have a requirement of the law to let the state board of medical examiners know if any of their colleagues are not following proper procedures. He strongly supported this bill,

**Bob Olsen, Montana Hospital Association**, said he had been involved in a task force that had looked at trauma injuries, by being able to discuss case records, they were able to address ways to improve the outcome in emergency centers. He stated if they did not have the ability for this process, to share records, that could limit their ability to make improvements.

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**Kristi Blazer, Rimrock Foundation**, said they support SB 248.

**Sami Butler, Montana Nursing Association**, said this a worthwhile bill and they support it.

**Jerry Loendorf, Montana Medical Association**, said they endorse the testimony of the other proponents. He said patient records are not affected by this bill. The only thing a person would not have access to is the proceedings of a peer review committee and their records.

**Susan Witte, BlueCross BlueShield**, said they are in support of this bill.

**Jeanne Cannon, Helena Health Alliance**, said they support SB 248.

**Opponents' Testimony:**

**Doug Buxbaum, Montana Trail Lawyers Association, Buxbaum, Dix and Dain**, said he was not here today to oppose legitimate peer review, but there are two very important issues to be looked at. The first is the process of peer review, under which legitimate criticism, opinion, and discussion about what had happened is protected from discovery, and the use of it in court would be protected. On the other hand legitimate, factual information about what happened to a patient while in the hospital should be available to the patient. That patient should have equal access to information about what happened to him, as do the health care people who were providing that care. They would support this bill with some modifications. They feel this bill goes too far and creates confusion over the key term of "data". He proposed the language be expanded and passed out the amendments

**EXHIBIT (phs23a05)**. With these amendments they would support this bill. Without them they would oppose it, because they felt it would create a real danger of muddying the water and prohibiting

people from the right to know what happened to them. Finally, they would suggest the opportunity for an in camera court review.

**Al Smith, Montana Trial Lawyers Association**, said the second and third amendments, which **Mr. Buxbaum** passed out, would make the language clearer. This bill was very much about confidentiality, but it goes too far in preventing patients' or their relatives from being able to get records of the facts, regarding a stay in a facility. We have no objection to protecting peer review, but we feel this bill goes too far.

**Don Judge, Montana State AFL-CIO**, said he would concur with the testimony provided from the trial lawyers. He said there needs to be a balance struck with legitimate peer review, in order to determine more appropriate health care. He also said with the amendments they could support the bill.

**Questions from Committee Members and Responses:**

**SEN. STONINGTON** said the court did not state how documents should be treated, as part of the peer review proceedings. **Mr. Buxbaum** replied if in the peer review file, factual statements obtained the day the event occurred, that is factual information. This should be obtainable under the law. If there is a report of the peer review committee, that should not be discoverable or admissible.

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**SEN. STONINGTON** said she is trying to draw the distinction of what should be discoverable and what should not discoverable; also, on what is opinion and what is fact. **Ms. Donnelley** said the problems remains it is not possible to separate discussions of fact and factual matters from the peer review process.

**SEN. FRANKLIN** said she would like to give colleagues the opportunity to have protected data, but she realized there could be data that is discoverable. She agreed with **SEN. STONINGTON** and thinks the description of data is closer than you think.

**SEN. HARGROVE** asked **Ms. Witte** and **Mr. Loendorf** to take a look at the amendments.

**SEN. CHRISTIAENS** asked **Mr. Buxbaum** if he would provide his testimony in writing. **Mr. Buxbaum** said he would be happy to submit his written remarks.

**SEN. STONINGTON** said what they are trying to do in statutes, is to create language of what is discoverable and what is not. **Dr.**

**Eddy** said it is hard for people outside the medical community to understand all the language, therefore it may be hard for a trial judge, who only occasionally hears this language, to figure it out.

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**SEN. JOHNSON** asked **Herbert Pierce, an attorney from Billings**, to answer a question regarding the amendments. **Mr. Pierce** said the key here is what is discoverable and what is not. The Supreme Court said "what it relates to" and the trial courts take that to mean any document that has that patient identified; and that is the critical danger. The amendments takes the language from the court decision, if you adopt this language, then it means nothing in view of the court decision.

**SEN. BISHOP** asked **Mr. Pierce** why he did not appear as a witness. **Mr. Pierce** said there was a scheduling conflict.

**SEN. BISHOP** asked **Mr. Buxbaum** as a patients attorney, would you have access to all contacts this patient had. **Mr. Buxbaum** said they would be able to access the contacts the patient had, but there is a lot of other information they would not be able to access. **SEN. BISHOP** then said you want a little more than the facts; you want the opinion of the experts of the peer review committee. You seem to want a freebie. **Mr. Buxbaum** said they are only seeking equal access to the date the health care had taken place.

**SEN. BISHOP** said if he were a health care provider, he would be afraid to he give his opinion. **Mr. Buxbaum** said ultimately in our society there needs to be a referee and the only ones we have are district judges and then the Supreme Court.

**SEN. BISHOP** asked if there was any factual information that cannot be found out. **Mr. Pierce** said any information that comes up can be found out as factual information.

**Closing by Sponsor:**

**SEN. GRIMES** said the issue is where is the distinction between incident reports, factual visual information and peer review. He also said that none of the proponents would condone hiding incident material. He also said paragraph one of the amendments, the phrase "related to" is one of the most litigated phrases under ARISA. This committee will have a major role in making sure that the peer review process can continue.

**SEN. BISHOP** said we are going to do executive action on SB 248 Wednesday, January 31, 2001.

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**HEARING ON SJ 8**

**Sponsor:** **SEN. CHRIS CHRISTIAENS, SD 23, Great Falls**

**Proponents:** **Twila Kosty, Montana Foster and Adoptive Parents Organization**

**Opponents:** None

**Opening Statement by Sponsor:**

**SEN. CHRIS CHRISTIAENS, SD 23, Great Falls**, introduced SJ 8, which is a request to have a legislative interim study of the privatization of foster care and adoptive services.

**Proponents' Testimony:**

**Twila Kosty, Montana Foster and Adoptive Parents Organization** is in support of this study.

**Opponents' Testimony:** None

**Informational Testimony:**

**Shirley Brown, Child and Family Services**, said other states have been privatized as part of the Child Welfare System. The recommended areas to look at are sufficient oversight, monitoring to make sure all the federal regulation are met, and taking a look at the connections of the various systems, including the foster care system, the mental health system and the judicial system.

**Colleen Murphy, Executive Director of the Montana Chapter National Association of Social Workers** presented a copy of her testimony **EXHIBIT** (phs23a06).

**Questions from Committee Members and Responses:**

**SEN. BISHOP** asked if the Legislative Council could initiate a study like this on their own. **Sen. Christiaens** said only if there was a serious emergency or need.

**SEN. BISHOP** asked if the Legislative Council had any subpoena powers. **SEN. CHRISTIAENS** said yes, he believed they did.

**SEN. Johnson** asked for recommendations of the size of the committee.

**Closing by Sponsor:**

**SEN. Christiaens** said this is a very important review to have. If this resolution passes, it would go before the entire Legislature. It would then be ranked and if it became one of the top ones, it would be selected to be studied by the Legislative Council. If it went before a full committee that would generally be made up of eight people; four members from the house and four members from the Senate, with approximately \$26,000 budgeted for expenses. Sen. Christiaens said he doesn't believe this is the kind of study we need. He would like this to get assigned by the Legislative and then ask our staffer to research this.

**Ms. Fox** explained there is an interim committee - the Children, Families, Health and Human Service Interim Committee, already set up. If this study was rated, it would be sent to this committee. The Legislative Council would then have the discretion to determine if this study would be looked at by an entire committee or by a staff person that is attached to a committee.

**HEARING ON SB 288**

**Sponsor:**

**SEN. CHRIS CHRISTIAENS, SD 23, Great Falls,** introduced SB 288. This bill would allow for the donation of prescription drugs from long-term care facilities to pharmacies, and the be given to certain low income persons.

**Proponents:** **Lois O'Connor, Helena**

**Susan Good, Allied Citizens for Healthcare Equity**

**Jim Smith, Pharmacy Association**

**Rose Hughes, Montana Healthcare Association**

**Sami Butler, Montana Nurses Association**

**Opponents:**

**Opening Statement by Sponsor:**

**SEN. CHRIS CHRISTIAENS, SD 23, Great Falls,**

**Proponents' Testimony:**

**Lois O'Connor, Helena,** said she is in support of SB 288. She is a cancer survivor. She told about her treatments and having very expensive prescriptions, worth at least \$1500.00. Since she could no longer use them, she was forced to destroy them. She had hoped they could have been recycled, and when she found out they could not, she was appalled at such a waste of money.

**Susan Good, Allied Citizens for Healthcare Equity,** said she wanted to thank **SEN. CHRISTIAENS** for bringing forth this bill. She said the in Louisiana they have implemented a program for drugs to be recycled. In Montana, nursing homes are required to flush unused drugs down the toilet. She urged to committee to support this bill

**Jim Smith, Pharmacy Association,** said his leadership decided to support this bill with these amendments **EXHIBIT (phs23a07)**. There will be obstacles with the Food and Drug Administration, HICFA and Medicaid, because there is a lot of complexity with this issue. He also said there were some concerns about bringing these unused drugs back to pharmacies. He thought the original idea was for the drugs to be returned to a federally qualified health center.

**Rose Hughes, Montana Healthcare Association,** said they understand what **SEN. CHRISTIAENS** was trying to do. It might be better if this program was implemented to make it mandatory to have these drugs returned to a central location such as a pharmacy. This can be done and it is being done in other states. This bill needs to be a little different than in its current form.

**Sami Butler, Montana Nurses Association,** she said the nurses believe in this concept. She said there needs to be an outlet for these unused drugs.

**Opponents' Testimony:** None

**Questions from Committee Members and Responses:**

**SEN. DEPRATU** wondered if food banks could be included along with the federally qualified health centers, since many low income people go to the food banks for assistance. **Mr. Smith** said in



his amendments he was looking for another location other than retail pharmacies, and he would be willing to work with **SEN. CHRISTIAENS** on alternative language.

**SEN. FRANKLIN** asked if there was some reason why recycling drugs was limited to nursing homes. **Ms. Good** said the reason it was limited to nursing homes was she had taken this idea out of out of the American Medical Association newsletter. The language could be expanded to include other facilities, but she felt she did not have the knowledge to make the changes.

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**SEN. GRIMES** asked if the other programs that are operating used pharmacies. **Ms. Good** said some of them do and the AMA does support this idea.

**SEN. GRIMES** said he would feel fine if pharmacies received these recycled prescriptions. He also wondered since the pharmaceutical association already supply new medications to federally qualified health care centers, would this association consider supplying the recycled medications pro bono. **Becky Deschamps, Board of Pharmacy**, said she said she was concerned about the drugs were being distributed out of pharmacies and the confusion that could cause. She also said there are many federal regulations regarding returned drugs; such as drugs in blisterpacks, they cannot be reheated.

**SEN. FRANKLIN** said this is a fabulous idea, but clearly there needs to be some infrastructure, including distribution protocol, and a distribution process. She also wondered if this is something the Board of Pharmacy would be willing to take on. **Ms. Deschamps** said she agreed this is a worthwhile cause and with the proper rulemaking, they would try their best.

**Closing by Sponsor:**

**SEN. CHRISTIAENS** said he read in the *Wall Street Journal*, many drugs have a long shelf life, some as long as 10 to 12 years. He would be willing to work with anyone to make this a good bill.

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**ADJOURNMENT**

Adjournment: 5:08 P.M.

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SEN. AL BISHOP, Chairman

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JEANNE FORRESTER, Secretary

AB/JF

**EXHIBIT** (phs23aad)